

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISABEL TUBACH,

Plaintiff,

v.

JAQUEZ, et. al.,

Defendants.

CV F 05 605 AWI SMS P

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION (Doc. 1.)

Isabel Tubach ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the instant action on November 4, 2004, in the Sacramento Division of the Eastern District of California. The Case was transferred to this District on May 5, 2005. Currently pending is an Application to Proceed In forma Pauperis filed with the original complaint. The Court issued an Order requiring Plaintiff to submit a completed Application to Proceed In Forma Pauperis on May 26, 2005. To date, Plaintiff has not submitted the completed forms or paid the filing fee.

The Court takes judicial notice of court records indicating that Plaintiff, on three or more occasions, has filed actions that have been dismissed as frivolous, malicious or for failure to state a claim for relief.¹

Title 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

In this case, Plaintiff has filed the following three actions which have all be dismissed for Plaintiff’s failure to state a claim: Tubach v. Gomez, CV F 97-5549 OWW DLB P, dismissed on October 17, 1997 as frivolous; Tubach v. Farmon, CV F 96-5551 REC SMS P, dismissed on February 24, 1998 as frivolous; and Tubach v. Riley, CV F 98-5603 REC HGB P, also dismissed on March 12, 1999, as frivolous. All of these cases were terminated prior to Plaintiff’s initiation of this action on May 5, 2005 and thus, Plaintiff is precluded from proceeding in forma pauperis in any action filed after that date unless Plaintiff is, at the time the Complaint is filed, under imminent danger of serious physical injury.

The Court has examined the Complaint and finds that the case presents no facts from which an inference can be drawn that Plaintiff was under any continuing or imminent danger of serious physical injury at the time the action was filed. 28 U.S.C. § 1915(g).

Accordingly, based on the foregoing, the court HEREBY RECOMMENDS that:

1. The action be DISMISSED without prejudice.

IT IS ORDERED that these Findings and Recommendations be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.

¹The Court may take judicial notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993). Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th Cir.); *see also* Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989); Rodic v. Thistledown Racing Club, Inc., 615 F.2d 736, 738 (6th Cir. 1980).

§ 636(b)(1). Within THIRTY (30) days after being served with these Findings and Recommendations, Plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: July 7, 2005
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE